Supreme Court of the United States

October Term, 1994

LESLIE WILTON, ON BEHALF OF HIMSELF AND AS A REPRESENTATIVE OF CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON, AND CERTAIN INSTITUTE OF LONDON UNDERWRITERS COMPANIES, AS FOLLOWS, THE ORION INSURANCE COMPANY, PLC, SKANDIA U.K. INSURANCE PLC, THE YASUDA FIRE & MARINE INSURANCE COMPANY OF EUROPE, LTD., OCEAN MARINE INSURANCE CO., LTD., YORKSHIRE INSURANCE CO., LTD., MINSTER INSURANCE CO., LTD., PRUDENTIAL ASSURANCE CO., LTD., PEARL ASSURANCE PLC, BISHOPSGATE INSURANCE LTD., HANSA MARINE INS. CO. (UK) LTD., VESTA (UK) INS. CO., LTD., NORTHERN ASSURANCE CO., LTD., CORNHILL INSURANCE CO., LTD., SIRIUS INSURANCE CO., (UK) LTD., SOVEREIGN MARINE & GENERAL INSURANCE CO., TOKIO MARINE & FIRE INSURANCE (UK) LTD., TAISHO MARINE & FIRE INSURANCE CO. (UK) LTD., STOREBRAND INSURANCE CO. (UK) LTD., ATLANTIC MUTUAL INSURANCE CO., ALLIANZ INTERNATIONAL INSURANCE CO., LTD., AND WAUSAU INSURANCE CO. (UK) LTD.,

versus

Petitioners,

SEVEN FALLS COMPANY, MARGARET HUNT HILL, ESTATE OF A. G. HILL, LYDA HILL, ALINDA H. WIKERT, AND U.S. FINANCIAL CORP.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. In reviewing a decision by a district court to abstain from exercising federal jurisdiction in a declaratory judgment action, should the court of appeals determine the abstention issue *de novo*, or on the basis of whether the district court abused its discretion?

II. May a federal district court that has diversity jurisdiction over a declaratory judgment action abstain from exercising that jurisdiction in light of a later-filed action in a state court?

LIST OF PARTIES

All Petitioners named in the caption of this case were parties plaintiff to the proceedings below and constitute all those that have a direct interest in the judgment sought to be reviewed; Petitioners' corporate parents and nonwholly owned subsidiaries include:

1. ING Group NV (Netherlands), ultimate parent of The Orion Insurance Company, PLC;
2. Skandia Group (Sweden), ultimate parent of Skandia U.K. Insurance PLC;
3. Yasuda (Japan), ultimate parent of The Yasuda Fire & Marine Insurance Company of Europe, Ltd.;
4. Commercial Union PLC, ultimate parent of Ocean Marine Insurance Co., Ltd.;
5. General Accident PLC, ultimate parent of Yorkshire Insurance Co., Ltd.;
6. Societe Centrale du Groupe des Assurances Nationales, ultimate parent of Minster Insurance Co., Ltd.;
7. Prudential Corporation PLC, ultimate parent of Prudential Assurance Co., Ltd.;
8. Australian Mutual Provident Society, ultimate parent of Pearl Assurance PLC;
9. AMEV, ultimate parent of Bishopsgate Insurance Ltd.;
10. Tyrgg Hansa SSP Holding (Sweden), ultimate parent of Hansa Marine Ins. Co. (UK) Ltd.;

LIST OF PARTIES – Continued

11. Skandia Group (Sweden), ultimate parent of Vesta (UK) Ins. Co., Ltd.;
12. Commercial Union PLC, ultimate parent of Northern Assurance Co., Ltd.;
13. Allianz AG Holding (Germany), ultimate parent of Cornhill Insurance Co., Ltd.;
14. ASEA Brown Boveri (Switzerland), ultimate parent of Sirius Insurance Co., (UK) Ltd.;
15. Willis Corroon PLC, ultimate parent of Sovereign Marine & General Insurance Co.;
16. Tokio Marine & Fire Insurance Co., Ltd. (Japan), ultimate parent of Tokio Marine & Fire Insurance (UK) Ltd.;
17. Mitsui Marine & Fire Insurance Co., Ltd. (Japan), ultimate parent of Taisho Marine & Fire Insurance Co. (UK) Ltd.;
18. UNI Storebrand (Norway), ultimate parent of Storebrand Insurance Co. (UK) Ltd.;
19. Atlantic Mutual Insurance Co. of New York, ultimate parent of Atlantic Mutual Insurance Co.;
20. Allianz AG Holding (Germany), ultimate parent of Allianz International Insurance Co., Ltd.;

LIST OF PARTIES – Continued

21. Employers Insurance of Wausau (U.S.A.), ultimate parent of Wausau Insurance Co. (UK) Ltd.;
22. London & Overseas Insurance Co. PLC, a subsidiary of The Orion Insurance Company, PLC;
23. Contingency Insurance Company, Ltd., a subsidiary of Minster Insurance Co., Ltd.;
24. GAN North America Inc., an associated company of Minster Insurance Co., Ltd.;
25. Prudential Life of Ireland Ltd., a subsidiary of Prudential Assurance Co., Ltd.;
26. Prudential Vita SPA (Italy), a subsidiary of Prudential Assurance Co., Ltd.;
27. Hallmark Insurance Company Ltd., a subsidiary of Pearl Assurance PLC;
28. Leadenhall Insurance Ltd., a subsidiary of Bishopsgate Insurance Ltd.;
29. Hansa General Insurance Co. (UK) Ltd., a subsidiary of Hansa Marine Ins. Co. (UK) Ltd.;
30. Allianz Cornhill Insurance (Far East) Ltd. (Hong Kong), a subsidiary of Cornhill Insurance PLC;
31. Holding Cornhill France SA, a subsidiary of Cornhill Insurance PLC;

LIST OF PARTIES – Continued

32. Cornhill France SA, a subsidiary of Cornhill Insurance PLC;
33. Themis SA (France), a subsidiary of Cornhill Insurance PLC;
34. Sovereign Insurance (UK) Ltd., a subsidiary of Sovereign Marine & General Insurance Co.; and
35. Norden Insurance Co. (UK) Ltd., a subsidiary of Storebrand Insurance Co. (UK) Ltd.

Petitioners' Counsel:

MEYER ORLANDO & EVANS$_{PC}$
Michael A. Orlando
Patrick C. Appel
Paul LeRoy Crist

Respondents named in the caption of this case were the remaining parties to the proceedings below and so constitute the other individuals and entities that have a direct interest in the judgment sought to be reviewed; Respondents' Counsel below were:

HAYNES & BOONE
Werner A. Powers
Charles C. Keeble, Jr.

The parallel litigation subsequently filed by Respondents, *inter alia*, in Texas state court, after amendment, involves the following parties:

LIST OF PARTIES – Continued

1. Sherman Hunt;
2. Stuart Hunt;
3. Hara Hunt;
4. Hilre Hunt;
5. Texana Resources Corporation;
6. Silco, Inc.;
7. Headwater Oil Company;
8. Tribal Drilling Company;
9. Chester J. Donnally, Trustee of the Margaret Hunt Hill – A.G. Hill Trust, the Elisa Margaret Hill Trust, the Heather Victoria Hill Trust, the Cody McArthur Wikert Trust, the Margretta Hill Wikert Trust, the Michael Bush Wisenbaker, Jr. Trust, and the Wesley Hill Wisenbaker Trust;
10. Planet Indemnity Company; and
11. Underwriters Indemnity Company.

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In The

Supreme Court of the United States

October Term, 1994

LESLIE WILTON, ON BEHALF OF HIMSELF AND AS A REPRESENTATIVE OF CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON, AND CERTAIN INSTITUTE OF LONDON UNDERWRITERS COMPANIES, AS FOLLOWS, THE ORION INSURANCE COMPANY, PLC, SKANDIA U.K. INSURANCE PLC, THE YASUDA FIRE & MARINE INSURANCE COMPANY OF EUROPE, LTD., OCEAN MARINE INSURANCE CO., LTD., YORKSHIRE INSURANCE CO., LTD., MINSTER INSURANCE CO., LTD., PRUDENTIAL ASSURANCE CO., LTD., PEARL ASSURANCE PLC, BISHOPSGATE INSURANCE LTD., HANSA MARINE INS. CO. (UK) LTD., VESTA (UK) INS. CO., LTD., NORTHERN ASSURANCE CO., LTD., CORNHILL INSURANCE CO., LTD., SIRIUS INSURANCE CO., (UK) LTD., SOVEREIGN MARINE & GENERAL INSURANCE CO., TOKIO MARINE & FIRE INSURANCE (UK) LTD., TAISHO MARINE & FIRE INSURANCE CO. (UK) LTD., STOREBRAND INSURANCE CO. (UK) LTD., ATLANTIC MUTUAL INSURANCE CO., ALLIANZ INTERNATIONAL INSURANCE CO., LTD., AND WAUSAU INSURANCE CO. (UK) LTD.,

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United

States Court of Appeals for the Fifth Circuit, entered in the above-entitled proceeding on June 29, 1994.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit is not reported, and is reprinted in the appendix hereto, pp. A-1 – A-4, *infra*.

The opinion of the District Court for the Southern District of Texas is not reported, and is reprinted in the appendix hereto, pp. B-1 – B-4, *infra*.

JURISDICTION

The decision of the Court of Appeals for the Fifth Circuit was rendered on June 29, 1994. Jurisdiction over this petition is conferred by 28 U.S.C. § 1254.

This case was originally filed in the United States District Court for the Southern District of Texas. Diversity jurisdiction, 28 U.S.C. § 1332, was asserted and relief was sought under the Declaratory Judgment Act, 28 U.S.C. § 2201(a). This case was appealed to the United States Court of Appeals for the Fifth Circuit pursuant to 28 U.S.C. § 1291.

STATUTE INVOLVED

28 U.S.C. § 2201(a). Declaratory Judgment Act.

> In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

STATEMENT OF THE CASE

This appeal arises out of a dispute between various oil and gas interests, including Seven Falls Company, Margaret Hunt Hill, Estate of A. G. Hill, Lyda Hill, Alinda H. Wikert, and U. S. Financial Corporation ("Respondents"), against their insurers, including Petitioners Leslie Wilton on Behalf of Himself and as Representative of Certain Underwriters at Lloyd's of London, and Certain Member Companies of the Institute of London Underwriters ("Petitioners"), over a $110 million judgment of the Winkler County, Texas court against Respondents, which they seek covered under Petitioners' policies.[1] Basing jurisdiction upon diversity of citizenship under 28 U.S.C. § 1332, Petitioners filed an action in federal court on December 9, 1992, seeking a declaration that their policies did not cover the losses incurred by Respondents as a result of the Winkler County lawsuits.

[1] See ROA II p. 18 and ROA I p. 262.

After voluntary dismissal and reinstatement of Petitioners' action, Respondents (and others) commenced a parallel state court suit seeking coverage, as well as exemplary and punitive damages, against their insurers.[2] Based upon this later-filed state court action in a county of clearly improper venue, as Respondents belatedly conceded, the United States District Court for the Southern District of Texas granted Respondents a stay of this declaratory judgement action. Appendix, pp. B-1 – B-4.

Petitioners respectfully assert that for the Declaratory Judgment Act to have any continued validity, the court below had to exercise its jurisdiction over this case and deny the Motion to Dismiss or Stay. Accordingly, the order of the United States District Court for the Southern District of Texas should have been reversed, and affirmance by the Fifth Circuit Court of Appeals suggests certiorari review because it failed even to consider the abstention factors established by *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 96 S.Ct. 1236, 47 L.Ed. 2d 483 (1976) and *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 103 S.Ct. 927, 74 L.Ed. 2d 765 (1983).

[2] Cause No. 93-03542, styled *Margaret Hunt Hill, et al. v. Leslie Wilton, et al.*, in the 299th Judicial District Court, Travis County, Texas, has been by agreement of the parties transferred as Cause No. 93-58208, to the 133rd Judicial District Court, Harris County, Texas. This state court action seeks actual damages of $110 million, plus exemplary and punitive damages of at least $330 million. ROA II pp. 122-24 ¶¶ 45-51. Also named as defendants were the insurers for the Hunt parties, *i.e.*, Planet Indemnity Company and Underwriters Indemnity Company. ROA II pp. 129 ¶¶ 36-37 & 136.

BACKGROUND

On July 31, 1992 Petitioners declined to defend Respondents against claims being asserted against them in two nearly identical lawsuits pending in state court in Texas, because the policies in question provided no coverage.[3] One of these underlying suits proceeded to trial in September 1992; the other suit was stayed pending outcome of the appeal of the judgment from the trial of the first case.

In November 1992, the jury returned a verdict against Respondents, *inter alia*, in excess of $110 million on claims of breach of contract, tortious interference with contract, and slander of title. On November 24, 1992, Respondents' counsel advised Petitioners of the adverse jury verdict by a short, one-sentence letter.[4] No demand for coverage was made at that time and no lawsuit was threatened by the Respondents.

Having declined coverage and believing there to be a serious question as to whether their policies provided coverage, Petitioners filed suit in the United States District Court for the Southern District of Texas on December 9, 1993, seeking a declaration that none of the coverages of the policies insured losses such as incurred as a result of the Winkler County lawsuit.[5]

In December 1992, Respondents' counsel requested that Petitioners dismiss their declaratory judgment action. Respondents' counsel represented to Petitioners' counsel that other insurers were the target of Respondents' coverage

[3] ROA I pp. 185-88, 204 ¶6; III p. 3.

[4] ROA I pp. 193-95, 205 ¶2; II pp. 53-58, 145-47, 150 ¶2.

[5] ROA II pp. 1-110; I p. 225; I p. 5.

claims and that no suit against Petitioners was contemplated by Respondents.[6]

Hoping to resolve the coverage dispute amicably without the need of a federal or state court suit, Petitioners agreed voluntarily to dismiss their action. However, Petitioners so agreed only after reaching an agreement that Respondents would give Petitioners two weeks' notice if, and when, Respondents decided to pursue their claims against Petitioners. On January 22, 1993, Petitioners voluntarily dismissed their declaratory judgment action in accordance with this agreement with Respondents.

On February 23, 1993, Respondents' counsel notified Petitioners of their intention to file suit in Travis County, Texas. Accordingly, Petitioners refiled their declaratory judgment action on February 24, 1993.

Although Respondents filed an action at that time against other insurers in state court in Dallas County, Texas,[7]

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[6] ROA I pp. 193-98, 205 ¶3, 225; II pp. 139-144, 150 ¶3; III p. 19. Long before Respondents filed any suit against Petitioners, and indeed before they ever made claims against any of these Underwriters, Respondents were engaged in an active controversy with other insurers.

[7] *Plaintiffs' Original Petition and Application for Injunctive Relief* was filed by Margaret Hunt Hill, et al., against Ronald Malcolm Pateman, Certain Underwriters at Lloyd's of London and Other Insurance Companies on February 24, 1993, in the 298th Judicial District Court, Dallas County, Texas. ROA I pp. 152-183, 204 ¶7. When Respondents finally brought suit in Dallas County, Texas against their other insurers, it was some three months after the filing of Petitioners' first declaratory judgment action and a month after the voluntary dismissal thereof; as Petitioners were not named as parties in the Dallas

they waited until March 26, 1993 to initiate an action against Petitioners; this was over a month after Petitioners' present declaratory judgment action was filed and almost four months after Petitioners filed their initial declaratory judgment action on December 9, 1992.[8] Simultaneously, Respondents filed a motion to dismiss or stay this declaratory judgment action pending resolution of their newly instigated state court action.[9]

At the time Petitioners made their Response to the Motion to Dismiss or Stay, the only action taken in the Travis County case had been Respondents' filing of their original petition. At that time, Petitioners had not answered in Travis County nor had even been served with citation therein.[10] Petitioners' answer in the later-filed state court suit was made mere weeks before this action was stayed.[11]

The district court granted Respondents' motion and ordered this litigation stayed, pending the resolution by the state court of Respondents' later-filed action. The district court based its decision to abstain on two principal factors, namely, the possibility of piecemeal litigation, and Petitioners' "race" to the courthouse, filing suit in anticipation of expected litigation. Appendix pp. B-2 & B-3. In doing so, the district court failed to apply the abstention factors this Court

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County action, it took Respondents yet another month to sue Petitioners, when Respondents' Travis County action was filed March 26, 1993.

[8] ROA II pp. 120-137, 150 ¶5.

[9] ROA I pp. 261-63.

[10] ROA I pp. 212-13.

[11] ROA I p. 213.

mandated in *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 96 S.Ct. 1236, 47 L.Ed. 2d 483 (1976) and *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 103 S.Ct. 927, 74 L.Ed. 2d 765 (1983).

On appeal, the Court of Appeals for the Fifth Circuit reviewed the district court's decision solely for abuse of discretion, and affirmed. In doing so, the Fifth Circuit relied upon its decision in *Granite State Ins. Co. v. Tandy Corp.*, 986 F.2d 94, 97 (CA5), *cert. granted*, ___ U.S. ___, 113 S.Ct. 51, 121 L.Ed. 2d 21 (1992), *cert. dismissed*, ___ U.S. ___, 113 S.Ct. 1836, 123 L.Ed. 2d 463 (1993), wherein the analysis established under *Colorado River* and *Moses H. Cone* are specifically rejected in the context of the broad discretion to decline to grant declaratory relief under *Brillhart v. Excess Insurance Co.*, 316 U.S. 491, 62 S.Ct. 1173, 86 L.Ed. 2d 1620 (1942). Appendix, pp. A-3 & A-4. As interpreted by the Court of Appeals, the exceptional-circumstances test required by this Court in all other abstention-type cases is unnecessary in decisions under the Declaratory Judgment Act. The Fifth Circuit deviated from established practice in at least six other circuits in its deference to the district court's discretion, and from the law applied in at least ten other circuits in its outright rejection of *Colorado River* and *Moses H. Cone*. In direct conflict with current Fifth Circuit practice, four circuits have expressly mandated that a district court *must* consider the *Colorado River/Moses H. Cone* factors before deciding to abstain from exercising its jurisdiction in a declaratory judgment action.

REASONS FOR GRANTING THE WRIT

I. In conflict with other Circuits, the Fifth Circuit reviews a district court's decision to stay under a deferential abuse of discretion standard rather than *de novo*.

The Fifth Circuit, in the opinion below, held that, "This court reviews the dismissal of a declaratory judgment action for an abuse of discretion." Appendix, p. A-3. As read by the Court of Appeals, this discretion vested in the district court is reviewed highly deferentially under several cases. *Brillhart*, 316 U.S. at 497; *Travelers Ins. Co. v. Louisiana Farm Bureau Federation, Inc.*, 996 F.2d 774, 778-79 (CA5 1993); *Granite State*, 986 F.2d at 97-98; *Rowan Co., Inc. v. Griffin*, 876 F.2d 26, 29 (CA5 1989). In doing so, the Fifth Circuit is in accord with the First and the Second Circuits and the recent decisions of the Eighth and the Tenth Circuits in *United States Fidelity & Guar. Co. v. Murphy Oil USA, Inc.*, 21 F.3d 259, 263 (CA8 1994) and *State Farm Fire & Cas. Co. v. Mhoon*, ___ F.3d ___, 1994 WL 396173 (CA10 August 1, 1994).[12]

This deferential review directly conflicts with decisions of the Third, the Sixth, the Seventh, the Ninth, the Eleventh and the District of Columbia Circuits. *See Continental Cas. Co. v. Robsac Indus.*, 947 F.2d 1367, 1370 (CA9 1991) (insurance dispute); *Allstate Ins. Co. v. Mercier*, 913 F.2d 273, 277 (CA6 1990) (insurance dispute); *Cincinnati*

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[12] *See El Dia, Inc. v. Hernandez Colon*, 963 F.2d 488, 490 (CA1 1992); *Villa Marina Yacht Sales v. Hatteras Yachts*, 915 F.2d 7, 16 (CA1 1990); *General Reinsurance Corp. v. Ciba-Geigy Corp.*, 853 F.2d 78, 81 (CA2), *cert. denied*, ___ U.S. ___, 114 S.Ct. 1126, 127 L.Ed. 2d 434 (1988).

Ins. Co. v. Holbrook, 867 F.2d 1330, 1333 (CA11 1989) (insurance dispute); *International Harvester Co. v. Deere & Co.*, 623 F.2d 1207, 1217 (CA7 1980) (patent dispute); *Hanes Corp. v. Millard*, 531 F.2d 585, 591 (CADC 1976) (personal injury action). Review by this Court is necessary to provide a consistent standard among the Circuits concerning exercise of federal jurisdiction.

Decisions in the other Circuits highlight the importance of this issue. "Because theories of state and federal law, and expressions of federalism and comity, are so interrelated in the decision to abstain such dispositions are elevated to a level of importance dictating *de novo* appellate review." *Traughber v. Beauchane*, 760 F.2d 673, 676 (CA6 1985) (*Pullman* abstention). Specifically, the Sixth Circuit reviews *de novo* decisions involving the exercise of discretion under the declaratory judgment act. *Mercier*, 913 F.2d at 277 (construction of a homeowners insurance policy); *see also Heitmanis v. Austin*, 899 F.2d 521, 527 (CA6 1990) (*Colorado River* abstention).

When the Pennsylvania Insurance Commissioner sued foreign reinsurers on behalf of a regulated carrier in receivership, the reinsurers counterclaimed for a declaration of rights in *Grode v. Mutual Fire, Marine & Inland Ins. Co.*, 8 F.3d 953, 957-58 (CA3 1993). Upon review claiming abuse of discretion in abstaining under either the *Colorado River* or *Burford* doctrines, the Third Circuit clarified that "the underlying legal questions are subject to plenary review," so that the appeals court's review is not limited to an abuse-of-discretion standard. *Grode*, 8 F.3d at 957.

The Ninth and the Eleventh Circuits also review *de novo* the decision to exercise jurisdiction over insurance

disputes under the Declaratory Judgment Act. *40235 Washington Street Corp. v. Lusardi*, 976 F.2d 587, 588-89 (CA9 1992); *Robsac*, 947 F.2d at 1370. The Eleventh Circuit has specifically rejected deferential review in a declaratory judgment action, and uses its own judgment to resolve the issues.[13] "Although the district court has an area of discretion in deciding whether to grant or deny declaratory relief, that discretion should be exercised liberally in favor of granting such relief in order to accomplish the purposes of the Declaratory Judgment Act. The scope of appellate review of the exercise of such discretion is not under an 'arbitrary and capricious' standard but allows the appellate court to substitute its judgment for that of the trial court." *Cincinnati Insurance*, 867 F.2d at 1333 (citations omitted).

The importance of this issue is not limited to the insurance context. And while the Federal Circuit and scattered patent decisions from the other courts of appeals utilize an abuse of discretion standard,[14] the Seventh and the District of Columbia Circuits have reviewed declaratory judgment abstentions *de novo* in that and other contexts. Though there is "no absolute right to a

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[13] *Turner Entert. Co. v. Degeto Film Gmbh.*, 25 F.3d 1512, 1515 (CA11 1994); *American Mfrs. Mut. Ins. Inc. v. Edward D. Stone, Jr. & Assoc.*, 743 F.2d 1519, 1525 (CA11 1984).

[14] *Gerentech, Inc. v. Eli Lilly & Co.*, 998 F.2d 931, 933 (CTAF 1993) (abuse of discretion to dismiss University "in favor of later-filed suit in California"); *Intermedics Infusaid, Inc. v. Regents of Univ. of Minn.*, 804 F.2d 129, 133 (CTAF 1986) (no abuse of discretion to stay a patent declaratory judgment action brought by the licensee).

declaratory judgment in the federal courts," in the District of Columbia Circuit, the grant or denial of declaratory relief is subject to "searching review." *Hanes Corp.*, 531 F.2d at 591. The Seventh Circuit "does not defer to the judgment of the district court [but] must exercise its own sound discretion as to the propriety of the grant or denial of a declaratory judgment." *International Harvester*, 623 F.2d at 1217 (citations omitted) (patent violation); *see also Tempco Elec. Heater Co. v. Omega Engineering, Inc.*, 819 F.2d 746, 749 (CA7 1987) (patent infringement).

The Third, the Sixth, the Seventh, the Ninth, the Eleventh and the District of Columbia Circuits review *de novo* abstention decisions in declaratory judgment cases. The deferential review accorded by the First, the Second, the Fifth, the Eighth, and the Tenth (and to a limited extent the Fourth and the Federal) Circuits is in express conflict with the decisions of six other Circuits. The substantial conflict between the standards applied between the two circuit groupings indicates that this problem extends beyond the particular facts of Petitioners' dispute with their insureds. The breadth of the conflict, and the need to assure uniformity among the Circuits on a basic issue of federal procedure, support the granting of the writ Petitioners' request.

II. In conflict with decisions of other Circuits, the Fifth Circuit has expressly ignored this Court's mandate that federal courts have a virtually unflagging obligation to exercise their jurisdiction, and that only exceptional circumstances justify abdication of that responsibility.

This Court should hear this case to restore the efficacy of the declaratory judgment remedy and to resolve the conflicting decisions involving the abstention doctrine as applied in the declaratory judgment context. This case presents the Court with a prime opportunity to resolve conclusively what has become an increasingly tangled web of decisions issued by several courts of appeals on the factors appropriate for determining whether a district court should abstain from exercising jurisdiction in a declaratory judgment action.

A. Policy considerations, issues of federalism and comity, and effectuation of Congress' intent support certiorari review of this case.

Deference to a later-filed state court action, simply because another forum is available, is inconsistent with the affirmative, remedial character of the right to a federal forum granted by Congress. The legislative intent is clear that parties to private disputes should be able to avail themselves of this procedural mechanism and obtain, where appropriate, a declaration of their rights and responsibilities from a neutral forum. H.R. Rep. No. 627, 72d Cong., 1st Sess., at 2 (1932); H.R. Rep. No. 1264, 73d Cong., 2d Sess., at 2 (1934).

Congress has not given district courts discretion to dismiss cases merely because it is more convenient to do so. Rather, district courts have discretion to grant the relief sought, or to deny the relief sought, following a full trial on the merits. *See* S. Rep. No. 1005, 73d Cong., 2d Sess., at 2, 5 (1934). As visualized by its framers, the Declaratory Judgment Act was intended to be a progressive, affirmative protection for "the perplexed and insecure citizen," specifically in insurance disputes. Edwin Borchard, DECLARATORY JUDGMENTS vii, 634-80 (2d ed. 1941).[15]

All litigants have a right to maintain a suit under the Declaratory Judgment Act to secure a judgment determining the obligations and liabilities of the parties. *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 243-44, 57 S.Ct. 461, 465, 81 L.Ed. 617, 622-23 (1937). To effectuate this intent, district courts must give declaratory judgment litigants their day in court. District courts *must* hear declaratory judgment cases; district courts *may* decline to enter the requested relief. *See* H.R. Rep. No. 627, 72d Cong., 1st Sess., at 2 (1932).

The Fifth Circuit's decision to allow unfettered discretion to stay duly-filed federal cases in light of later-filed state actions effectively eviscerates the declaratory judgment remedy that Congress enacted for situations just like the one in this case. This Court's recent decisions in *McCarthy v. Madigan*, ___ U.S. ___, 112 S.Ct. 1081, 117

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[15] Professor Borchard, one of the earliest proponents of declaratory judgments, testified before the Senate Judiciary Committee in support of the passage of the Declaratory Judgment Act. *See* S. Rep. No. 1005, 73d Cong., 2d Sess., at 2 (1934).

L.Ed. 2d 291 (1992), and *New Orleans Pub. Serv., Inc. v. New Orleans*, 491 U.S. 350, 109 S.Ct. 2506, 105 L.Ed. 2d 298 (1989), command a district court with valid jurisdiction to exercise that jurisdiction in declaratory judgment cases, except in the most exceptional circumstances.

McCarthy, *New Orleans Pub. Serv., Inc.*, and *Moses H. Cone* make it clear that declaratory judgment actions must be viewed with the same unflagging obligation to exercise jurisdiction as is required with all other types of actions validly within federal jurisdiction. If the only restraints on a district court's discretion is that its decision to stay or dismiss a declaratory judgment action is not governed by bias and is neither arbitrary nor capricious, the mere pendency of a state court action will be considered sufficient grounds to abstain.[16] District courts may not cavalierly cast aside their responsibility to resolve matters within their jurisdiction, and "there is no doctrine that the availability or even the pendency of state judicial proceedings excludes the federal courts." *New Orleans Pub. Serv., Inc.*, 491 U.S. at 373, 109 S.Ct. at 2520.

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[16] Some lower federal courts, presented with declaratory judgment actions and parallel state court litigation, have applied *Colorado River* where federal law is at issue, but not when state law applies. Still others have applied *Colorado River* when the federal court action was filed first, but not when it was filed later. Where circuit law so required or the conscience of the court indicated its propriety, some district courts have paid lip service to the factors this Court has articulated, but in practice have simply ignored *Colorado River*'s unflagging obligation to exercise jurisdiction.

As federal jurisdiction is not discretionary, the absence of a test restraining the district courts' unfettered discretion to decline that jurisdiction is "treason to the Constitution." *Id.* at 358, 109 S.Ct. at 2512-13 ("The right of a party plaintiff to choose a federal court where there is a choice cannot properly be denied." (citations omitted)).

Absent some uniform set of factors to govern the discretion *Brillhart* and its Fifth and Ninth Circuit progeny vest with the district courts, there is serious doubt as to the continuing viability of the Declaratory Judgment Act as an affirmative remedy, especially for insurers. Coupled with the Fifth Circuit's abuse-of-discretion review of the decision to dismiss or stay, unfettered discretion seriously prejudices a declaratory judgment plaintiff's right to request a statutory remedy under standardized considerations "informed by the teachings and experience concerning the functions and extent of federal judicial power." *Public Serv. Comm'n v. Wycoff Co.*, 344 U.S. 237, 243, 73 S.Ct. 236, 240, 97 L.Ed. 291, 299 (1952). The importance of both federalism and comity concerns require that district courts faced with declaratory judgment actions engage in a careful analysis of the factors set out by this Court in *Colorado River* and *Moses H. Cone*.

B. The Fifth, the Seventh, and the Ninth Circuits have given district courts virtually unfettered discretion to dismiss or stay validly filed declaratory judgment actions, whereas adherence to this Court's commands regarding abstention substantially protects litigants in the other ten circuits in their exercise of the federal remedy Congress saw fit to create.

Resolution by this Court is also required by the direct conflict amongst the Circuits, and in some instances within decisions of a circuit distinguishable only by judicial fictions tailored to the facts.[17] The Fifth Circuit has ultimately held that, in declaratory judgment cases, a district court has virtually unfettered discretion guided by only the roughest considerations.[18] In accord with the Ninth Circuit in *Robsac*, the Fifth Circuit in *Granite State* and subsequent decisions has held that the *Colorado River*

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[17] *Compare Sinclair Oil Corp. v. Amoco Production Co.*, 982 F.2d 437, 440 (CA10 1992) *with Life-Link Intern., Inc. v. Lalla*, 902 F.2d 1493, 1495 (CA10 1990); *and Aetna Cas. & Sur. Co. v. Merritt*, 974 F.2d 1196, 1199 (CA9 1992) *with Continental Cas. Co. v. Robsac Indus., Inc.*, 947 F.2d 1367, 1371 (CA9 1991); *and Rowan Co., Inc. v. Griffin*, 876 F.2d 26, 29 (CA5 1989) *with Evanston Ins. Co. v. Jimco, Inc.*, 844 F.2d 1185, 1191 (CA5 1988).

[18] While there is now a six-factor Fifth Circuit test for abstention from a declaratory judgment action in consideration of a parallel state court suit, a district court's decision to dismiss or stay a properly filed federal action still does not have to weigh three of the crucial considerations articulated in *Colorado River*, 424 U.S. at 800 and *Moses H. Cone*, 460 U.S. at 1. *See Travelers*, 996 F.2d at 778-79 (omitting jurisdiction over real property, precedence of filing, conflict of laws or application of federal law).

and *Moses H. Cone* factors do not apply to declaratory judgment actions. *Travelers*, 996 F.2d at 778-79. *Accord Robsac*, 947 F.2d at 1370. Petitioners respectfully assert that this is contrary to this Court's pronouncement that "Abdication of the obligation to decide cases can be justified under [the abstention] doctrine only in the exceptional circumstances where the order to the parties to repair to the state court would clearly serve an important countervailing interest." *Colorado River*, 424 U.S. at 813.

When *Granite State* overruled a conflicting intracircuit decision that had applied the *Colorado River/Moses H. Cone* factors, the Fifth Circuit joined a very small minority. While four of the courts of appeals have expressly mandated that district courts consider the *Colorado River/Moses H. Cone* factors in all declaratory judgment cases,[19] another six circuits have ruled that this Court's traditional abstention analysis governs at least some declaratory judgment contexts or that some elements of this Court's test should be considered in deciding to dismiss or stay a properly filed declaratory judgment action.

Only two courts of appeals, those for the Seventh and the Ninth Circuits, have never held that traditional abstention analysis and specifically the *Colorado*

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[19] *Employers Ins. of Wausau v. Missouri Elec. Works, Inc.*, 23 F.3d 1372, 1374-75 (CA8 1994); *Villa Marina Yacht Sales v. Hatteras Yachts*, 915 F.2d 7, 16 (CA1 1990); *General Reinsurance Corp. v. Ciba-Geigy Corp.*, 853 F.2d 78, 81 (CA2 1988); *American Mfrs. Mut. Ins. Inc. v. Edward D. Stone, Jr. & Assoc.*, 743 F.2d 1519, 1525 (CA11 1984).

River/Moses H. Cone factors apply to declaratory judgment actions.[20] In comparison, the First Circuit in *Villa Marina* not only held the six factors applied in *Moses H. Cone* directly applicable to declaratory judgment cases, but offered – factor by factor for three pages – the district court on remand "some guidance for what we anticipate will be a difficult decision [because it is] worth giving some attention to our view of the significance of certain factors." *Villa Marina*, 915 F.2d at 13 & 14-16.

In addition to the First, the Second, the Eighth, and the Eleventh Circuits wherein the *Colorado River/Moses H. Cone* factors expressly govern declaratory judgment abstention and effectively limit the district court's unbridled discretion under *Brillhart*, those factors have been applied sporadically or were at least considered in cases from six other circuits. *Gerentech, Inc. v. Eli Lilly & Co.*, 998 F.2d 931, 949 (CTAF 1993); *Mitcheson v. Harris*, 935 F.2d 235, 239-40 & n.2 (CA4 1992); *University of Maryland*

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[20] *Robsac*, 947 F.2d at 1370. *But see Allendale Mut. Ins. Co. v. Bull Data Sys.*, 10 F.3d 425, 430-31 (CA7 1993) (after *New Orleans Pub. Serv. Inc.*, applies *Colorado River* presumption against abstention in a declaratory judgment context, but no discussion of the six-factor test); *Interstate Material Corp. v. City of Chicago*, 847 F.2d 1285, 1288 (CA7 1988) (ten-factor test arguably incorporating all this Court's considerations, but in different formulations); *Tempco Elec. Heater Co. v. Omega Engineering, Inc.*, 819 F.2d 746, 749 (CA7 1987) (upholds *Brillhart* discretion in patent infringement case, but declines to address declaratory judgment plaintiff's invocation of abstention principles); *Board of Educ. v. Bosworth*, 713 F.2d 1316, 1318 (CA7 1983) (*Burford* abstention). The discernable trend in the Seventh Circuit is, if predictions were to be made, to adopt this Court's *Colorado River/Moses H. Cone* factors, as well as the presumption against abstention and the exceptional-circumstances doctrine.

v. Peat Marwick Main & Co., 923 F.2d 265, 271 (CA3 1991); *Life-Link Intern., Inc. v. Lalla*, 902 F.2d 1493, 1495 (CA10 1990); *Heitmanis v. Austin*, 899 F.2d 521, 527 (CA6 1990); *Hanes Corp. v. Millard*, 531 F.2d 585, 591 (CADC 1976).

While there is either conflicting authority within the circuit or there are differing tests depending upon circumstances the court of appeals has considered determinative of a particular case,[21] the District of Columbia, the Federal, the Third, the Fourth, the Sixth, and the Tenth Circuits join the First, the Second, the Eighth, and the Eleventh Circuits in considering this Court's abstention precedents at least applicable to the decision to stay or dismiss a properly filed declaratory judgment action.

This case is stayed because of the Fifth Circuit's use of a scheme contrary to the decisions of its sister circuits and this Court. Had this case been brought in a district court in the District of Columbia, the Federal, the First, the Second, the Third, the Fourth, the Sixth, the Eighth, the Tenth or the Eleventh Circuits, those courts would have allowed this case to proceed. The circuit in which a case is filed should not determine the standard applied in exercising federal jurisdiction. Certiorari is warranted to

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[21] For instance, the District of Columbia Circuit has had few occasions to pass on the factors to be considered in declining to hear a declaratory judgment action, but *Hanes Corp.* does cite to *Colorado River*. *Hanes Corp.*, 531 F.2d at 591. The Tenth Circuit has the most tangled set of tests and the clearest intracircuit split. *See, e.g., Sinclair Oil Corp. v. Amoco Production Co.*, 982 F.2d 437, 440 (CA10 1992) (in conflict with *Life-Link Intern., Inc. v. Lalla*, 902 F.2d 1493, 1495 (CA10 1990)).

resolve this conflict between two groups of circuits, and to assure uniformity of federal decisions on this issue of federal law.

This significant split between the Circuits as to the proper analysis to be applied in declaratory judgment actions requires immediate resolution. While certiorari review by this Court on this particular issue was granted in *Granite State*, voluntary dismissal of that cause left practitioners and the Courts of Appeals without guidance. *Cert. granted* ___ U.S. ___, 113 S.Ct. 51, 121 L.Ed. 2d 21 (1992); *cert. dismissed*, ___ U.S. ___, 113 S.Ct. 1836, 123 L.Ed. 2d 463 (1993).

The Fifth Circuit is the only court of appeals which has expressly declared that the standardless decision to dismiss or stay will be reviewed only for an abuse of discretion by the district court. In contrast with even the Ninth Circuit that also rejects the applicability of *Colorado River* and *Moses H. Cone* to declaratory judgment actions, the Fifth Circuit has left litigants with no meaningful protection against the "whim or personal disinclination" of the district courts to decline properly invoked jurisdiction whenever a parallel suit suggests the possibility of piecemeal litigation. Substantially standardless and nearly unreviewable discretion to dismiss or stay mocks the "virtually unflagging obligation of the federal courts to exercise the jurisdiction given them." *Colorado River*, 424 U.S. at 817; 96 S.Ct. at 1246.

CONCLUSION

This case involves the degree of deference a district court's decision to dismiss or stay a declaratory judgment action deserves on appeal, and the factors which should be applied in that decision regardless of the circuit in which the federal action is filed. The importance of these issues extends well beyond the facts of this dispute, for the outcome here will affect the abstention doctrine broadly. Nothing less than the continued viability of the Declaratory Judgment Act is at stake. For these reasons, the Court should exercise its discretion to grant a writ of certiorari.

Respectfully submitted,

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September 26, 1994

No. _____

In The

Supreme Court of the United States

October Term, 1994

LESLIE WILTON, ON BEHALF OF HIMSELF AND AS A REPRESENTATIVE OF CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON, AND CERTAIN INSTITUTE OF LONDON UNDERWRITERS COMPANIES, AS FOLLOWS, THE ORION INSURANCE COMPANY, PLC, SKANDIA U.K. INSURANCE PLC, THE YASUDA FIRE & MARINE INSURANCE COMPANY OF EUROPE, LTD., OCEAN MARINE INSURANCE CO., LTD., YORKSHIRE INSURANCE CO., LTD., MINSTER INSURANCE CO., LTD., PRUDENTIAL ASSURANCE CO., LTD., PEARL ASSURANCE PLC, BISHOPSGATE INSURANCE LTD., HANSA MARINE INS. CO. (UK) LTD., VESTA (UK) INS. CO., LTD., NORTHERN ASSURANCE CO., LTD., CORNHILL INSURANCE CO., LTD., SIRIUS INSURANCE CO., (UK) LTD., SOVEREIGN MARINE & GENERAL INSURANCE CO., TOKIO MARINE & FIRE INSURANCE (UK) LTD., TAISHO MARINE & FIRE INSURANCE CO. (UK) LTD., STOREBRAND INSURANCE CO. (UK) LTD., ATLANTIC MUTUAL INSURANCE CO., ALLIANZ INTERNATIONAL INSURANCE CO., LTD., AND WAUSAU INSURANCE CO. (UK) LTD.,

versus *Petitioners,*

SEVEN FALLS COMPANY, MARGARET HUNT HILL, ESTATE OF A. G. HILL, LYDA HILL, ALINDA H. WIKERT, AND U.S. FINANCIAL CORP.,

Respondents.

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

APPENDIX

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-2608
Summary Calendar

LESLIE WILTON, ETC., ET AL.,

Plaintiffs-Appellants,

VERSUS

SEVEN FALLS COMPANY, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 93 0531)

[Filed June 29, 1994]

Before GARWOOD, DAVIS, and DUHÉ, Circuit Judges.

DAVIS, Circuit Judge:[1]

The plaintiffs appeal the district court's order staying this action for declaratory judgment pending resolution of a later-filed state court suit. Because we find that the

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[1] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

district court did not abuse its discretion in staying this action, we affirm.

I.

In October 1992, a verdict in excess of $100 million was rendered against the appellees and others in suits involving a dispute over the ownership and operation of certain oil and gas properties. Anticipating litigation based on this verdict, in December 1992, the plaintiffs/appellants (collectively "London Underwriters") filed a declaratory judgment action pursuant to 28 U.S.C. § 2201 in the United States District Court for the Southern District of Texas. The appellants sought declaration of their rights and liabilities under several policies of commercial general liability insurance issued to appellees (collectively the "Hill Group"). Counsel for the parties thereafter entered into an agreement whereby London Underwriters agreed to voluntarily dismiss their declaratory judgment action in exchange for the Hill Group's agreement to provide London Underwriters two weeks advance notice prior to commencing any litigation against London Underwriters.

In February 1993, the Hill Group notified London Underwriters of their intention to file suit in state court. London Underwriters immediately filed this declaratory judgment action in the Southern District of Texas. In March 1993, the Hill Group filed an action against London Underwriters in state court. At approximately the same time, the Hill Group also filed a Rule 12(b) motion to dismiss or stay the federal declaratory judgment action. The district court granted the appellees's [*sic*] Rule

12 motion, staying the declaratory judgment action pending resolution of the state court action. London Underwriters appeal.

II.

The district court has broad discretion to grant (or decline to grant) declaratory judgment. **Torch, Inc. v. LeBlanc,** 947 F.2d 193, 194 (5th Cir. 1991). This court reviews the dismissal of a declaratory judgment action for an abuse of discretion. **Rowan Cos. v. Griffin,** 876 F.2d 26, 29 (5th Cir. 1989).

The district court may consider a variety of factors in considering whether to grant or deny declaratory relief, including the existence of a pending state court proceeding in which the issues might be fully litigated. **Id.**

> Fundamentally, the district court should determine whether the state action provides an adequate vehicle for adjudicating the claims of the parties and whether the federal action serves some purpose beyond mere duplication of effort. The district court should consider denying declaratory relief to avoid gratuitous interference with the orderly and comprehensive disposition of a state court litigation if the claims of all parties can satisfactorily be adjudicated in the state court proceeding.

Matter of Magnolia Marine Transp. Co., 964 F.2d 1571, 1581 (5th Cir. 1992) (internal punctuation and citations omitted).

The pending state court action in this case encompasses the coverage issues raised by London Underwriters in this declaratory action. The appellants are parties to the pending state court action and may assert coverage defenses in that suit. The district court did not abuse its discretion in concluding that maintenance of this declaratory judgment action would result in piecemeal adjudication of the coverage dispute and would reward London Underwriters's [*sic*] attempts to forum shop. Accordingly, the district court's order declining to entertain this declaratory judgment action is affirmed.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LESLIE WILTON, On Behalf of Himself and as a Representative of Certain Underwriters at Lloyd's of London, et al.,	§	CIVIL ACTION NO. H-93-531
Plaintiffs,	§	
v.	§	
SEVEN FALLS COMPANY, et al.,	§	
Defendants.	§	

O R D E R

[Filed July 2, 1993]

Pending before this Court is a motion to dismiss or to stay (Document #3) filed by defendants Seven Falls Company, Margaret Hunt Hill, Estate of A.G. Hill, Lyda Hill, Alinda H. Wikert, and U.S. Financial Corporation. After having considered the motion, the submissions of the parties, and the applicable law, the Court determines that this action should be stayed.

Plaintiffs Leslie Wilton, on behalf of himself and as a representative of certain Underwriters at Lloyd's of London, and certain Institute of London Underwriters companies filed this action, seeking a declaration of their rights and obligations under five different insurance policies issued to the defendants. *See* Document #1. Plaintiffs have denied coverage and defense obligations under the policies for claims pending against defendants in Winkler

County, Texas and Dallas County, Texas (collectively, the "Heritage Group claims"). *See* Document #1, Exhibit C.

In September 1992, before this action was filed, the lawsuit pending in Winkler County proceeded to trial, and the court entered a jury verdict against the defendants in excess of $100 million. Document #3 at 1-2. After receiving notice of the verdict, plaintiffs filed a declaratory judgment suit identical to the present action on December 9, 1992. Document #3 at 2; Document #5 at 2-3. That suit was dismissed without prejudice pursuant to an agreement of counsel which required defendants to give plaintiffs notice of any intent to commence litigation in the future. Document #3 at 2; Document #5 at 3. Such notice was given on February 23, 1993, and plaintiffs filed this action later that day. *Id.* On March 26, 1993, defendants filed a suit in Travis County, Texas, against the plaintiffs for, among other things, breach of contract and breach of the duty of good faith and fair dealing. *Id.* In the instant motion, defendants seek to dismiss or to stay this action pending the conclusion of the related suit in Travis County.

The district court, in its discretion, may provide declaratory relief. *909 Corp. v. Village of Bolingbrook Police Pension Fund*, 741 F. Supp. 1290, 1292 (S.D. Tex. 1990) (citing *Mission Ins. Co. v. Puritan Fashions Corp.*, 706 F.2d 599, 601 (5th Cir. 1983)). To determine if declaratory relief is appropriate, the court may consider whether the declaratory judgment action was filed in anticipation of a trial on the same issues in state court. *Rowan Companies, Inc. v. Griffin*, 876 F.2d 26, 29 (5th Cir. 1989) (citing *Brillhart v. Excess Ins. Co. of America*, 316 U.S. 491, 494-5 (1942)); *909 Corp.*, 741 F. Supp. at 1292. The court may also

consider whether granting relief will result in piecemeal litigation. *Granite State Ins. Co. v. Tandy Corp.*, 762 F. Supp. 156, 157 (S.D. Tex. 1991), *aff'd*, 959 F.2d 968 (1992) (citations omitted).

The state court lawsuit pending in Travis County encompasses the coverage issues raised by the plaintiffs in this action. The plaintiffs are already parties to that suit and may assert their claims as defenses or counterclaims. Resolving the plaintiffs' claims in this Court, however, would not dispose of the Travis County suit. Further, when the plaintiffs originally filed this suit in December 1992, they did so in anticipation of litigation after receiving notice of the Winkler County verdict. *See 909 Corp.*, 741 F. Supp. at 1292-93 (disallowing forum shopping in the guise of a declaratory judgment action). Thus, the Court finds that exercising jurisdiction to grant declaratory relief would result in the piecemeal adjudication of the plaintiffs['] and defendants' coverage dispute and would reward plaintiffs' attempts to forum shop. *See* Document #4, Exhibits B, C. A stay of these proceedings is therefore appropriate.

Based on the foregoing, the Court

ORDERS that defendants' motion to dismiss or to stay (Document #3) is GRANTED IN PART. This action [is] hereby STAYED pending resolution of *Margaret Hunt Hill, et al. v. Leslie Wilton, et al.*, No. 93-03542, currently pending in the 299th Judicial District Court of Travis County, Texas.

SIGNED at Houston, Texas, on this the 30 day of June, 1993.

/s/ David Hittner
DAVID HITTNER
United States
District Judge